

6-8-2017

State v. Adeng Appellant's Brief Dckt. 44756

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Adeng Appellant's Brief Dckt. 44756" (2017). *Not Reported*. 3806.
https://digitalcommons.law.uidaho.edu/not_reported/3806

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

BRIAN R. DICKSON
Deputy State Appellate Public Defender
I.S.B. #8701
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 44756
)	
v.)	ADA COUNTY NO. CR-FE-2014-9859
)	
REGAN MOJOK ADENG,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Regan Adeng contends the district court abused its discretion when it revoked his probation and executed his underlying sentence in this case. Rather, a sufficient consideration of all the mitigating factors, particularly including the new change in Mr. Adeng's mental health diagnosis, reveals that a continued term of probation would better serve all the goals of sentencing. Therefore, this Court should reverse the order revoking Mr. Adeng's probation and remand this case for the district court to return him to probation.

Statement of the Facts & Course of Proceedings

A jury initially convicted Mr. Adeng of possession of methamphetamine, misdemeanor possession of marijuana, and misdemeanor possession of drug paraphernalia. (R., pp.131-34.)¹ The mental health evaluations conducted at that time diagnosed Mr. Adeng only with alcohol abuse, and concluded he did not present with a serious mental illness (*hereinafter*, SMI). (PSI, pp.145, 154-55.) The district court imposed, and initially executed, a unified sentence of seven years, with two years fixed, for the methamphetamine charge, and concurrent 180-day sentences for the two misdemeanors.² (R., pp.143-46.) Mr. Adeng filed a notice of appeal from that judgment and challenged the district court's denial of his pretrial motion to suppress, but the Court of Appeals affirmed. *State v. Adeng*, 2016 WL 4413307 (Ct. App. 2016), *unpublished*.

Mr. Adeng also filed a timely motion for leniency pursuant to I.C.R. 35. (R., p.139.) The district court granted that motion, deciding to retain jurisdiction over the case rather than simply execute the sentences. (R., pp.159-61.) Mr. Adeng participated in the traditional rider program during that period of retained jurisdiction. (R., pp.163-64.) Despite having some disciplinary issues during that program, Mr. Adeng was able to complete two of his three assigned classes. (Presentence Investigation Report (*hereinafter*, PSI), pp.193-94.)³ The rider staff ultimately recommended the district court suspend Mr. Adeng's sentence for a period of probation. (PSI, p.192.) New mental health evaluations at that time diagnosed Mr. Adeng as suffering from a mood disorder not otherwise specified, but concluded this still did not qualify as an SMI. (PSI,

¹ The record prepared in this case was augmented with the record from Mr. Adeng's prior appeal, Docket Number 42991. (R., p.2.) However, the two volumes are consecutively paginated, and so, will simply be referred to as "R."

² With the subsequent award of credit for time served, the two misdemeanor sentences have been completely served. (*See* R., p.266.)

³ All citations to "PSI" are to the PDF "Adeng 44756 psi" which was provided with the new limited record.

pp.182-83, 189.) Therefore, those evaluations recommended counselling to help Mr. Adeng better address life stress, his addictions, and past trauma, but they did not recommend any specific mental health treatment. (*See, e.g.*, PSI, pp.183-84.) The district court ultimately followed the rider staff's recommendation and suspended Mr. Adeng's sentence for a five-year term of probation. (R., pp.167-73.)

A little over a year later, the State filed a motion for probation violation, alleging Mr. Adeng had violated the terms of his probation in several ways. (R., pp.209-12.) His probation officer noted that intermediate options, such as imposition of a curfew, instigation of a behavior contract, and a job search requirement, had been used to try to address the violations. (R., p.215.) Pursuant to a plea agreement, Mr. Adeng agreed to admit to several of those allegations, with the State dismissing the remainder. (Tr., p.5, Ls.18-25.)⁴ Specifically, he admitted having a new misdemeanor conviction for inattentive driving, using methamphetamine on two occasions, failing to complete a vocational rehabilitation program and the rider aftercare program, and failing to attend or find a sponsor for his participation in the AA program. (*See* Tr., p.5, Ls.18-25; R., pp.209-12.)

The district court ordered an updated PSI with new mental health evaluations. (Tr., p.17, Ls.19-24.) The updated PSI noted that Mr. Adeng was struggling to deal with his brother's death, which happened approximately three months after he was placed on probation. (*See* PSI, p.17; R., p.167.) Defense counsel explained that his brother's death had left Mr. Adeng "in a very dark place and he couldn't get himself out." (Tr., p.26, Ls.22-23.) As a result, Mr. Adeng was unable to open up about that event or its impact on him and his mental health because of the pain of his grief. (Tr., p.26, L.24 - p.27, L.3.)

⁴ All citations to "Tr." in this brief refer to the volume prepared for this appeal which contains the transcripts of the most recent admit/deny and disposition hearings.

As a result, the mental health evaluations now concluded Mr. Adeng presented with an SMI or other mental health needs based on rule-out diagnoses for major depressive disorder, generalized anxiety disorder, and posttraumatic stress disorder or other acute stress disorder. (*See, e.g.*, PSI, pp.27, 41.) They recommended he receive intensive outpatient treatment with psychiatric medication and individual and group therapy. (PSI, pp.38, 42.) Nevertheless, Mr. Adeng acknowledged that he had not been able to comply with the terms of his probation and took responsibility for that failure. (Tr., p.28, Ls.2-5.) As such, he requested the district court consider placing him back on probation. (Tr., p.28, Ls.11-13.)

The district court rejected that request. It pointed to the fact that Mr. Adeng had a long history of misdemeanor offenses, though (as the parties corrected the judge), the underlying offense was only Mr. Adeng's second felony conviction. (Tr., p.30, L.8 - p.32, L.14.) There was no discussion of Mr. Adeng's new mental health diagnoses or the recommendations for treatment. (*See generally* Tr.) Ultimately, the district court decided to revoke Mr. Adeng's probation and execute his underlying sentence. (Tr., p.29, L.24 - p.30, L.3.) Mr. Adeng filed a notice of appeal timely from that order. (R., pp.266, 269.)

ISSUE

Whether the district court abused its discretion by revoking Mr. Adeng's probation and executing his underlying sentence.

ARGUMENT

The District Court Abused Its Discretion By Revoking Mr. Adeng's Probation And Executing His Underlying Sentence

The decision to revoke probation is one within the district court's discretion. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). A district court abuses its discretion when

it fails to recognize the issue as one of discretion, acts beyond the outer limits of that discretion or inconsistent with the applicable legal standards, or does not reach a decision based on an exercise of reason. *State v. Hedger*, 115 Idaho 598, 601 (1989). When deciding whether or not to revoke probation, the district court must determine “whether the probation is achieving the goal of rehabilitation and whether continuation of the probation is consistent with the protection of society.” *Chavez*, 134 Idaho at 312.

In this case, the district court did not sufficiently consider Mr. Adeng’s mental health issues, as required by statute. *See* I.C. § 19-2523; *Hollon v. State*, 132 Idaho 573, 581 (1999). Up to the most recent disposition hearing, there was nothing really to consider in that regard since the evaluations had all indicated that Mr. Adeng did not suffer from a serious mental illness. (*See* PSI, pp.154-55, 183.) However, that changed after Mr. Adeng completed his rider program when his brother died. (*See* Tr., p.26, L.22 - p.27, L.3; PSI, p.17; R., p.167.) After that event, Mr. Adeng began presenting with an SMI or other mental health needs which was due to a new prospective diagnoses of depression, anxiety, and acute stress disorders. (*See* PSI, pp.27, 41.)

The new mental health evaluations also explained the symptoms of these conditions require some form of treatment, and that treatment could be achieved in the community. (*See* PSI, pp.27, 42.) It does not appear that Mr. Adeng was afforded a meaningful opportunity to get mental health treatment while he was on probation. (*See* R., pp.214-15 (indicating Mr. Adeng was only required to participate in a vocational rehabilitation program, AA/NA, and the rider aftercare program, as opposed to specific mental health treatment programs); *see also* R., p.215 (indicating that intermediate options were used during the period of probation, but none of which included mental health treatment).) In fact, as the probation officer noted, the terms of

probation only required Mr. Adeng complete such mental health treatment *as recommended by the GAIN or mental health evaluation*. (PSI, p.33; accord R., p.170.) Up until the most recent evaluations, conducted after the motion for probation violation, those evaluations did not make any recommendations for specific treatment for mental health conditions. (See PSI, pp.47, 145, 154-55, 182-90.) Therefore, the district court needed to sufficiently consider that new information about Mr. Adeng's mental health issues and the need for treatment in its disposition decision.

Basically, in failing to sufficiently consider the nature of Mr. Adeng's mental health issues and the potential treatment options available to address them, the district court has failed to address the sentencing objective with the Idaho Supreme Court has indicated should be the district court's initial consideration when making such decisions – rehabilitation. *State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015); *see also Chavez*, 134 Idaho at 312 (explaining that, when deciding whether to revoke probation, the district court should evaluate whether probation has been, or could continue, “achieving the goal of rehabilitation” consistent with the goal of protecting society). Therefore, the district court's decision to revoke Mr. Adeng's probation and execute his sentence was not made consistent with the applicable legal standards, which require the district court to consider the defendant's mental health issues. *See* I.C. § 19-2523; *Hollon*, 132 Idaho at 581. Thus, that decision constitutes an abuse of its discretion.

CONCLUSION

Mr. Adeng respectfully requests that this Court reverse the order revoking his probation and remand this case for the district court to place him back on probation.

DATED this 8th day of June, 2017.

_____/s/_____
BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 8th day of June, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

REGAN MOJOK ADENG
INMATE #76306
SICI
PO BOX 8509
BOISE ID 83707

SAMUEL A HOAGLAND
DISTRICT COURT JUDGE
E-MAILED BRIEF

CHARLENE W DAVIS
DEPUTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BRD/eas